IN THE COURT OF APPEALS OF IOWA

No. 1999-401 (9-654) / 99-70
Filed January 12, 2000

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CLERK SUPREME COURT

MARY KAY WILLIAMS, Appanoose County Treasurer,

Appellant,

vs.

ROBERT N. VAN SICKEL, RICHARD VAN SICKEL, JANET M. HANES n/k/a/ JANET M. LONGLEY, and GREG WILSON,

Appellees.

Appeal from the Iowa District Court for Appanoose County, Annette J. Szieszinski, Judge.

County treasurer appeals the district court's grant of summary judgment to property owners on treasurer's claim for delinquent ad valorem taxes. **AFFIRMED IN PART, REVERSED IN PART.**

Robert F. Bozwell, Jr., Assistant County Attorney, for appellant.

Bradley M. Grothe of Orsborn, Bauerle & Milani, L.L.P., Centerville, for appellees Van Sickel and Hanes.

Sidney E. Drake, Centerville, for appellee Wilson.

Heard by Sackett, C.J., and Zimmer, and Miller, JJ.

ZIMMER, Jr.

The Appanoose County Treasurer appeals the district court's grant of summary judgment to property owners on the treasurer's claim for delinquent ad valorem taxes due on real estate. We affirm in part and reverse in part.

I. Background Facts and Proceedings. In 1981, pursuant to a buy-sell agreement, defendant Greg Wilson purchased assets of a fertilizer business in Appanoose County from E.F. and Gertrude Van Sickel. The assets included the subject of the current claim for unpaid taxes, a building located on land leased from the Milwaukee Railroad. After E.F. Van Sickel died in 1984, Wilson made no further payments under the agreement. In 1988, the estate's and Gertrude's interests in the 1981 agreement were assigned to defendants Richard and Robert Van Sickel and Janet Hanes (n/k/a Janet Longley) (collectively "Van Sickels"). The fertilizer business failed and Wilson declared bankruptcy in 1988. The bankruptcy trustee abandoned Wilson's interest in the property, but the record does not reveal if Wilson's contractual obligation was also discharged.

In June 1990, the Appanoose County Treasurer ("treasurer") obtained a tax sale certificate on the building for unpaid ad valorem property taxes due for tax years 1987-89. No taxes were ever paid. On December 31, 1997, the treasurer filed a petition pursuant to Iowa Code section 445.3 (1997),[1] seeking an in personam

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[1]Iowa Code section 445.3 reads, in pertinent part:

> In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause

judgment against the defendants for $30,290.07 in unpaid taxes from tax years 1987-1996.

All defendants moved for summary judgment. They pointed out the in personam tax collection remedy first went into effect on April 1, 1992, and argued the treasurer had no authority to seek a personal judgment for delinquent taxes that accrued prior to that date. They also disputed the treasurer's authority to recover any taxes that were not the subject of a tax sale certificate. The treasurer resisted the motion and filed her own motion for partial summary judgment. The district court ruled the treasurer could not collect delinquent taxes via an in personam judgment. The treasurer filed a motion pursuant to Iowa Rule of Civil Procedure 179(b), requesting reinstatement of its in personam claim for delinquent taxes which accrued after April 1, 1992. The district court denied the motion because the post-April 1992 taxes were not the subject of a tax sale certificate. The treasurer appeals the grant of summary judgment and the denial of her rule 179(b) motion.

> an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for in ordinary actions.
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> The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. . . . This paragraph does not apply to the collection of ad valorem taxes under section 445.32, grain handling taxes under section 428.35, and moneys and credits taxes under chapter 430A. . . .

II. Scope of Review. We review a district court's ruling on a motion for summary judgment for corrections of errors at law. Iowa R. App. 4; *General Car & Truck Leasing System, Inc. v. Lane & Waterman*, 557 N.W.2d 274, 276 (Iowa 1996). We examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. *General Car & Truck*, 557 N.W.2d at 276. Here, the facts are largely undisputed and we are asked to determine whether the district court correctly applied the law.

III. Collection of Ad Valorem Taxes by Personal Judgment. The treasurer contends the in personam remedy is available in this case, both before and after April 1, 1992. The treasurer argues the district court misinterpreted section 445.3 and the Iowa Supreme Court's holding in *Hiskey v. Maloney*, 580 N.W.2d 797 (Iowa 1998), barring retroactive application of the in personam remedy. The treasurer argues the bar on retroactivity is limited to real property cases and does not apply to taxes owed on buildings on leased land. As for the post-April 1992 taxes, the treasurer points to section 445.3, which excludes buildings on leased land from the requirement that a tax sale certificate issue before the county can collect delinquent property taxes. These arguments present two issues: (1) whether the in personam remedy is available before or after April 1, 1992, and (2) whether a tax sale certificate was a prerequisite to collecting post-April 1992 delinquent taxes on a building on leased land. We separately examine the treasurer's authority to collect pre- and post-April 1992 taxes.

A. Pre-1992 Taxes. Iowa Code sections 445.3 and 446.20 were amended effective April 1, 1992, to permit counties to secure a personal as well as in rem

judgment to collect delinquent real estate taxes. *See* 1991 Iowa Acts ch. 191, sec. 28 and 72. Prior to the amendment, tax collection was an entirely in rem proceeding. *See* Iowa Code Annot. § 445.3; *Hiskey,* 580 N.W.2d at 799. The in personam remedy does not apply retroactively to collection of taxes included in tax sale certificates that issued before April 1, 1992, the effective date of the amendments. *Hiskey,* 580 N.W.2d 797. The only tax sale certificate issued in this case in June of 1990. We find *Hiskey* controls. The district court correctly determined the treasurer may not seek an in personam judgment to collect delinquent taxes that accrued prior to April 1, 1992.

The treasurer attempts to distinguish *Hiskey* by arguing that case only dealt with real estate, not buildings on leased land. The treasurer does not explain why this factual difference makes a legal difference. We find the analysis in *Hiskey* controls. The *Hiskey* court declined to apply the in personam remedy retroactively because that tax collection remedy had not previously existed. *Hiskey,* 580 N.W.2d at 799. Similarly, the in personam remedy did not previously exist for collection of taxes arising under Iowa Code section 445.32,[2] the section applicable to a building that has a different owner than the land on which it rests. *See* 1991 Iowa Acts ch. 191, sec.

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[2]Iowa Code section 445.32 (1997) states:

> If a building is erected by a person other than the owner of the land on which the building is located, as provided for in section 428.4, the taxes on the building are and remain a lien on the building from the date of levy until paid. If the taxes on the building become delinquent, as provided in section 445.37, the county treasurer shall collect the tax as provided in sections 445.3 and 445.4. . . .

42 (amending section 445.32 to include a reference to section 445.3, effective April 1, 1992). The prior remedy was issuance of a distress warrant and sale of the property. *See* Iowa Code § 445.32 (1991). The district court correctly applied *Hiskey* and granted summary judgment to the Van Sickels and Wilson on that part of the treasurer's claim for taxes that accrued prior to April 1, 1992.

B. Post-1992 Taxes. Clearly, the in personam remedy is available to collect taxes that arose after April 1, 1992. *See* Iowa Code §§ 445.3, 446.20; *cf. Hiskey,* 580 N.W.2d 797. The issue regarding the post-April 1992 taxes is whether the treasurer was required to obtain a tax sale certificate as a prerequisite to pursuing the remedy. The treasurer contends that because this is a building falling under section 445.32, no tax sale certificate is required prior to initiating collection.

We agree with the treasurer. This building falls under section 445.32, because the land and the building do not have the same owner.[3] In that situation, taxes on the building are assessed to the building owner, not the landowner. *See* Iowa Code § 428.4.[4] Section 445.32 provides that delinquent taxes on such buildings may be

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[3]There are no allegations that the railroad, which owns the land underneath this building, ever had or retains any ownership interest in the building.

[4]Iowa Code section 428.4 governs the taxation of buildings:

> . . . said auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings are erected by a person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate.

collected by proceeding under section 445.3. *See* Iowa Code § 445.32. Section 445.3 requires that tax collection actions may not begin without the issuance of a tax sale certificate, *unless the building has a different owner than the land on which the building is located.* Iowa Code § 445.3. This exception from the tax sale certificate requirement also went into effect on April 1, 1992. *See* 1992 Iowa Acts ch. 1016, sec. 18 (amending section 445.3 to except taxes arising under section 445.32 from the tax sale certificate requirement); *see also* 1992 Iowa Acts ch. 1016, sec. 42 (stating effective date of change in 445.3 was April 1, 1992). We conclude the district court erred by finding a tax sale certificate was necessary for the treasurer to proceed with the in personam collection of taxes on this building that accrued after April 1, 1992.

While the claim for post-April 1992 taxes may proceed, we cannot discern from this record what ownership interest in the building is retained either by Wilson or the Van Sickels, if any, or how the taxes should be divided, if necessary. Both Wilson and the Van Sickels disclaim any interest in the property, yet county records list Wilson and the Van Sickels as the owners of the building. The record also reveals that the Van Sickels attempted to amend their answer to include a cross-claim against Wilson for indemnification if they were required to pay the taxes. Wilson's bankruptcy trustee disclaimed his interest in the property, but the significance of this disclaimer has not been briefed and was not considered below. Furthermore, we do not know if Wilson's contractual obligation to the Van Sickels was discharged in bankruptcy—under the 1981 contract, Wilson assumed responsibility for taxes on the property. These are issues that we cannot resolve on appeal.

We reverse the district court's grant of summary judgment on that portion of the treasurer's claim for delinquent taxes accruing after April 1, 1992. We remand the case so that the treasurer may proceed with that part of its claim. We affirm the grant of summary judgment on the claim for delinquent taxes accruing before April 1, 1992.

AFFIRMED IN PART, REVERSED IN PART.